

UNITED STATES

V.

SPECIAL FINDINGS

DATED: 15 August 2013

The Court makes the following special findings:

1. The Court applied the following definitions for this offense:

“Enemy” includes not only organized opposing forces in time of war but also any other hostile body that our forces may be opposing and includes civilians as well members of military organizations.

“Wanton” includes “recklessness” but may connote willfulness, or a disregard of probable consequences and thus describes a more aggravated offense. “Reckless” conduct is conduct that exhibits a culpable disregard of foreseeable consequences to others from the act or omission involved. PFC Manning need not intentionally cause a resulting harm. The ultimate question is whether under all the circumstances, PFC Manning’s conduct was of that heedless nature that made it actually or imminently dangerous to others.

“Caused to be published” means the action of PFC Manning was a proximate cause of the publication even if it is not the only cause, as long as it is a direct or contributing cause that plays a material role,

meaning an important role, in bringing about the publication. An act is not a proximate cause if some other unforeseeable, independent, intervening event, which did not involve PFC Manning's conduct, was the only cause that played any important part in bringing about the publication.

"Conduct prejudicial to good order and discipline" is conduct which causes a reasonably direct and obvious injury to good order and discipline. "Service discrediting conduct" is conduct which tends to harm the reputation of the service or lower it in public esteem.

With respect to "prejudice to good order and discipline," the law recognizes that almost any irregular or improper act on the part of a service member could be regarded as prejudicial in some indirect or remote sense; however, only those acts in which the prejudice is reasonably direct and palpable is punishable under this Article.

With respect to "service discrediting," the law recognizes that almost any irregular or improper act on the part of a service member could be regarded as service discrediting in some indirect or remote sense; however, only those acts which would have a tendency to bring the service into disrepute or which tend to lower it in public esteem are punishable under this Article.

Under some circumstances, the accused's conduct may not be prejudicial to good order and discipline but, nonetheless, may be service discrediting. Likewise, depending on the circumstances, the accused's conduct can be prejudicial to good order and discipline but not be service discrediting.

2. The Court finds beyond a reasonable doubt that:

(1) at or near Contingency Station Hammer, Iraq, between on or about 1 November 2009 and on or about 27 May 2010, PFC Manning wrongfully and wantonly caused to be published on the internet, intelligence belonging to the United States Government, having knowledge that Intelligence published on the internet is accessible to the enemy;

(2) the intelligence PFC Manning caused to be published on the internet included the 12 Jul 07 CZ Engagement Zone 30 GC Anyone.avi video charged in specification 2 of Charge II, the more than one classified memorandum produced by a United States government intelligence agency charged in specification 3 of Charge II, the more than 380,000 records from the Combined Information Data Network Exchange (CIDNE) Iraq database charged in specification 4 of Charge II, the more than 90,000 records from the CIDNE-A database charged in specification 6 of Charge II, the more than 700 records from the Southern Command (SOUTHCOM) database charged in specification 8 of Charge II, the more than five classified records relating to a military operation in Farah Province, Afghanistan charged in specification 10 of Charge II, the more than 250,000 cables from the Department of State Net-Centric Diplomacy database (DOS NCD) charged in specification 12 of Charge II, the classified DOS cable titled "Reykjavik-13" charged in specification 14 of Charge II, and the Army Counter-Intelligence Center (ACIC) Report dated 18 March 2008 entitled "Wikileaks.org-An Online Reference to Foreign Intelligence Services, Insurgents, or Terrorist Groups?" charged in specification 15 of Charge II;

(3) At the time of the charged offense, al Qaeda and al Qaeda in the Arabian Peninsula were enemies of the United States. PFC Manning knew that al Qaeda was an enemy of the United States.

(4) At the time of the charged offense, PFC Manning had knowledge that intelligence published on the internet was accessible to al Qaeda.

(5) PFC Manning's conduct was wrongful.

(6) PFC Manning's conduct was of a heedless nature that made it actually and imminently dangerous to others. His conduct was both wanton and reckless.

(7) The conduct of PFC Manning was to the prejudice of good order and discipline in the armed forces.

(8) The conduct of PFC Manning was of a nature to bring discredit upon the armed forces.

2. CHARGE II, Specifications 4, 6, 8, 12, and 16: Stealing, Purloining, or Knowingly Converting Records Belonging to the United States of a Value in Excess of \$1,000.00

1. The Court applied the following definitions for these offenses:

To "steal" means to wrongfully take money or property belonging to the United States government with the intent to deprive the owner of the use and benefit temporarily or permanently.

"Wrongful" means without legal justification or excuse.

To "purloin" is to steal with the element of stealth, that is, to take by stealth the property of the United States government with intent to deprive the owner of the use and benefit of the property temporarily or permanently.

A "taking" doesn't have to be any particular type of movement or carrying away. Any appreciable and intentional change in the property's location is a taking, even if the property isn't removed from the owner's premises. PFC Manning did not have to know the United States government owned the property at the time of the taking.

A "conversion" may be consummated without any intent to permanently deprive the United States of the use and benefit of the property and without any wrongful taking, where the initial possession by the converter was entirely lawful. Conversion may include the misuse or abuse of property. It may reach use in an unauthorized manner or to an unauthorized extent of property placed in one's custody for limited use. Not all misuse of government property is a conversion. The misuse must seriously and substantially interfere with the United States government's property rights.

"Value" means the greater of (1) the face, par, or market value, or (2) the cost price, whether wholesale or retail. A "thing of value" can be tangible or intangible property. Government information, although intangible is a species of property and a thing of value.

The market value of stolen goods may be determined by reference to a price that is commanded in the market place whether that market place is legal or illegal. In other words, market value is measured by the price a willing buyer will pay a willing seller. (The illegal market place is also known as a "thieves market".) "Cost price" means the cost of producing or creating the specific property allegedly stolen, purloined, or knowingly converted.

An act is done "willfully" if it is done voluntarily and intentionally with the specific intent to do something the law forbids, that is, with a bad purpose to disobey or disregard the law.

An act is done "knowingly" if it is done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

The Court applies the same definitions for prejudice to good order and discipline in the armed forces and conduct of a nature to bring discredit upon the armed forces as applied in the special findings for specification 1 of Charge II.

The Court has taken judicial notice that Title 18, United States Code Section 641 was in existence on the dates alleged in specifications 4, 6, 8, 12, and 16 of Charge II.

2. The Court finds beyond a reasonable doubt that:

(1) at or near Contingency Operating Station Hammer, Iraq

SPECIFICATION 4: between on or about 31 December 2009 and on or about 5 January 2010; PFC Manning did steal, purloin, or knowingly convert records to his own use or someone else's use, to wit: a portion of the Combined Information Data Network Exchange Iraq database containing more than 380,000 records;

SPECIFICATION 6: between on or about 31 December 2009 and on or about 8 January 2010; PFC Manning did steal, purloin, or knowingly convert records to his own use or someone else's use, to wit: a portion of the Combined Information Network Exchange Afghanistan database containing more than 90,000 records;

SPECIFICATION 8: on or about 8 March 2010; PFC Manning did steal, purloin, or knowingly convert records to his own use or someone else's use, to wit: a United States Southern Command database containing more than 700 records;

SPECIFICATION 12: between on or about 28 March 2010 and on or about 27 May 2010; PFC Manning did steal, purloin, or knowingly convert records to his own use or someone else's use, to wit: the Department of State Net-Centric Diplomacy database containing more than 250,000 records;

SPECIFICATION 16: between on or about 11 May 2010 and on or about 27 May 2010; PFC Manning did steal, purloin, or knowingly convert records to his own use or someone else's use, to wit: a portion of the United States Forces – Iraq Microsoft Outlook/SharePoint Exchange Server global address list (USF-I GAL), to wit: 74,000 addresses from the list.

(2) for specifications 4, 6, 8, 12, and 16 of Charge II, PFC Manning did steal and purloin the records, and information therein, by using the Secret Internet Protocol Router Network (SIPRnet) computers in the 2nd Brigade Combat Team, 10th Mountain Division (2/10th Bde) sensitive compartmented information facility (SCIF) to extract the records, and information therein, from the relevant database, place the records, and information therein, on PFC Manning's private portable digital media or platform, and asport the records, and information therein, to his private quarters. For specifications 4, 6, 8, 12, and 16 of Charge II, PFC Manning had the specific intent to steal at the time of the extraction of the records, and information therein, from the relevant database.

(3) for specifications 4, 6, 8, and 12 of Charge II, the Court finds that PFC Manning knowingly converted the records and information therein, by sending them to WikiLeaks. These knowing conversions involved a misuse of the records, and information therein, that seriously and substantially interfered with the United States government's property rights. The records, and information therein, are classified. The knowing conversions by PFC Manning deprived the United States government of the ability to protect its classified information by storing it only on classified networks required to be located

in a SCIF and by restricting access to the classified information only to persons with appropriate security clearances and a need to know the information.

(4) for specification 16 of Charge II, the Court finds PFC Manning specifically intended to knowingly convert the records, and information therein, by giving them to WikiLeaks. Following a pattern of stealing classified records, and information therein, and knowingly converting the classified records and information therein, to WikiLeaks, PFC Manning viewed a 7 May 2010 tweet from WikiLeaks requesting a list of as many .mil addresses as possible. PFC Manning drafted a tasker for himself to "acquire and exfiltrate Global Address List from United States Forces-Iraq (USF-I) Microsoft Outlook/Share-point Exchange server". PFC Manning used the peter.bigelow account on the 2/10th Bde supply room Non-secure Internet Protocol router Network (NIPRnet) computer to extract 74,000 email addresses that were part of the USF-I GAL. On or about 13 May 2013, PFC Manning asported the addresses to his personal Macintosh (MAC) computer, with the intent to send them to WikiLeaks. PFC Manning was apprehended on 27 May 2010. These acts were done with the specific intent to knowingly convert the records, and information therein, to WikiLeaks. The acts amounted to more than mere preparation. Preparation consists of devising or arranging the means or measures necessary for the commission of the attempted offense. They were a substantial step and a direct movement toward the commission of the knowing conversion. The acts would have apparently tended to bring about the commission of the intended offense of knowing conversion. The acts would have resulted in the actual commission of the offense of knowing conversion, except for the unexpected intervening circumstance of PFC Manning's apprehension on 27 May 2010, which prevented completion of that offense. Although not raised by the parties as a special defense, the Court finds that PFC Manning did not voluntarily abandon the attempted knowing conversion by deleting the 74,000 addresses on his MAC computer. PFC Manning deleted evidence of other classified information he knowingly converted to WikiLeaks from his personal MAC computer.

(Special Findings Common to all specifications)

(5) the records, and information therein, belonged to the United States or a department or agency, thereof;

(6) PFC Manning acted knowingly and willfully and with the intent to deprive the government of the use and benefit of the records; and

(7) the records were of a value greater than \$1,000.00 as valued by the cost of production of the information in the records and the records, and, as an independent basis of valuation for each specification, by the thieves market.

(8) at the time 18 U.S.C. Section 641 was in existence on the dates alleged in the specifications;

(9) under the circumstances, the conduct of PFC Manning was to the prejudice of good order and discipline in the armed forces.

(10) under the circumstances, the conduct of PFC Manning was of a nature to bring discredit upon the armed forces.

3. CHARGE II, Specifications 3, 5, 7, 9, 10, and 15: Transmitting Defense information.

1. PFC Manning's plea established all of the elements of these offenses except the following:

(1) the classified records, memorandum, video, and files described for each specification was information related to the national defense;

(2) PFC Manning had reason to believe the classified records, memorandum, video, and files described for each specification could be used to the injury of the United States or to the advantage of any foreign nation; and

(3) 18 U.S.C. §793(e) was in existence on the dates alleged in the specifications.

2. The Court applied the following definitions for these contested elements:

The term "national defense" is a broad term which refers to the United States military and naval establishments and to all related activities of national preparedness.

To prove that documents, writings, photographs, videos, or information relate to the national defense, there are two things that the government must prove:

- (1) that the disclosure of the material would be potentially damaging to the United States or might be useful to an enemy of the United States; and
- (2) that the material is closely held by the United States government, in that the relevant government agency has sought to keep the information from the public generally and has not made the documents, photographs, videos, or computer files available to the general public. Where the information has been made public by the United States government and is found in sources lawfully available to the general public, it does not relate to the national defense. Similarly, where the sources of information are lawfully available to the public, and the United States government has made no effort to guard such information, the information itself does not relate to the national defense.

In determining whether material is "closely held," the Court considered whether it has been classified by appropriate authorities and whether it remained classified on the date or dates pertinent to the charge sheet. The Court considered whether the information was classified or not in determining whether the information relates to the national defense. However, the fact that the information is designated as classified does not, in and of itself, demonstrate that the information relates to the national defense.

"Reason to believe" means that PFC Manning knew facts from which he concluded or reasonably should have concluded that the information could be used for the prohibited purposes. In considering whether PFC Manning had reason to believe that the information could be used to the injury of the United States or to the advantage of a foreign country, the nature of the information involved may be considered. The fact-finder need not determine that PFC Manning had reason to believe that the information would be used against the United States, only that it could be so used. Additionally, the likelihood of the information being used to the injury of the United States or to the advantage of any foreign nation must not be remote, hypothetical, speculative, far-fetched, or fanciful. The Government is not required to prove that the information obtained by PFC Manning was in fact used to the injury of the United States or to the advantage of any foreign nation.

The Government does not have to prove that PFC Manning had reason to believe that his act could both injure the United States and be to the advantage of a foreign country – the statute reads in the alternative. Also, the country to whose advantage the information could be used need not necessarily be an enemy of the United States. The statute does not distinguish between friend and enemy.

In determining whether the person who received the information was entitled to have it, the Court considered all the evidence introduced at trial, including any evidence concerning the classification status of the information, any evidence relating to law and regulations governing the classification and declassification of national security information, its handling, use, and distribution, as well as any evidence relating to regulations governing the handling, use, and distribution of information obtained from classified systems.

The Court has taken judicial notice that Title 18, United States Code Section 793(e) was in existence on the dates alleged in specifications 3, 5, 7, 9, 10, and 15 of Charge II.

3. The Court finds beyond a reasonable doubt as follows:

(1) **SPECIFICATION 3:** the more than one classified memorandum produced by a United States government intelligence agency was information related to the national defense at the time of the willful communication. Disclosure of the material would be potentially damaging to the United States. The more than one classified memorandum produced by a United States government intelligence agency was closely held by the United States government. PFC Manning had reason to believe the information could be used to the injury of the United States or to the advantage of any foreign nation.

SPECIFICATION 5: the more than 20 classified records from the Combined Information Data Network Exchange Iraq database was information related to the national defense at the time of the willful communication. Disclosure of the material would be potentially damaging to the United States. The more than one classified memorandum produced by a United States government intelligence agency was closely held by the United States government. PFC Manning had reason to believe the information could be used to the injury of the United States or to the advantage of any foreign nation.

SPECIFICATION 7: the more than 20 classified records from the Combined Information Data Network Exchange Afghanistan database was information related to the national defense at the time of the willful communication. Disclosure of the material would be potentially damaging to the United States. The more than one classified memorandum produced by a United States government intelligence agency was closely held by the United States government. PFC Manning had reason to believe the information could be used to the injury of the United States or to the advantage of any foreign nation.

SPECIFICATION 9: the more than 3 classified records from a United States Southern Command database was information related to the national defense at the time of the willful communication. Disclosure of the material would be potentially damaging to the United States. The more than one classified memorandum produced by a United States government intelligence agency was closely held by the United States government. PFC Manning had reason to believe the information could be used to the injury of the United States or to the advantage of any foreign nation.

SPECIFICATION 10: the more than 5 classified records relating to a military operation in Farah Province, Afghanistan occurring on or about 4 May 2009 was information related to the national defense at the time of the willful communication. Disclosure of the material would be potentially damaging to the United States. The more than one classified memorandum produced by a United States government intelligence agency was closely held by the United States government. PFC Manning had reason to believe the information could be used to the injury of the United States or to the advantage of any foreign nation.

SPECIFICATION 15: the classified record produced by a United States Army intelligence organization, dated 18 March 2008 was information related to the national defense at the time of the willful communication. Disclosure of the material would be potentially damaging to the United States.

The more than one classified memorandum produced by a United States government intelligence agency was closely held by the United States government. PFC Manning had reason to believe the information could be used to the injury of the United States or to the advantage of any foreign nation.

(Element Common to all specifications)

(2) Title 18, United States Code Section 793(e) was in existence on the dates alleged in specifications 3, 5, 7, 9, 10, and 15 of Charge II;

(3) the conduct in specifications 5, 7, 9, 10, and 15 of Charge II occurred within the dates charged by the Government. The conduct in specification 3 of Charge II occurred within the dates charged by the Government as excepted and substituted by the Court in its verdict.

3. CHARGE II, Specifications 13 - Fraud and Related Activity With Computers

1. PFC Manning's plea established all of the elements of this offense except the following:

(1) PFC Manning knowingly exceeded authorized access on a Secret Internet Protocol Router Network Computer;

(2) PFC Manning had reason to believe such information so obtained, to wit: more than seventy-five classified United States Department of State (DOS) cables could be used to the injury of the United States or to the advantage of any foreign nation; and

(3) 18 U.S.C. §1030(a)(1) was in existence on the dates alleged in specification 13 of Charge II.

2. The Court applied the following definitions in accordance with the Court's Instructions and its 18 July 2012 Ruling: Defense Renewed Motion: Dismiss Specifications 13 and 14 of Charge II – Failure to State an Offense (AE 218):

The term "computer" means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but such term does not include an automated typewriter or typesetter, a portable hand-held calculator, or other similar device.

The term "exceeds authorized access" means that PFC Manning accessed a computer with authorization and used such access to obtain or alter information in the computer that PFC Manning is not entitled so to obtain or alter. It is the knowing use of the computer by exceeding authorized access which is being proscribed, not the unauthorized possession of, access to, or control over the protected information itself. Restrictions on access to classified information are not limited to code based or technical restrictions on access. Restrictions on access to classified information can arise from a variety of sources to include regulations, user agreements, and command policies. Restrictions on access can include the manner of access.

The Court applied the same "Reason to believe" definition applied for specifications 3, 5, 7, 9, 10, and 15 of Charge II, violations of 18 U.S.C. §793(e) and Article 134, UCMJ.

The Court has taken judicial notice that Title 18, United States Code Section 1030(a)(1) was in existence on the date alleged in the specification.

3. The Court finds beyond a reasonable doubt as follows:

(1) Between on or about 28 March 2010 and on or about 27 May 2010, PFC Manning knowingly exceeded authorized access on a SIPRnet computer by knowingly introducing W-get, an unauthorized program to his user account on the DCGS-A SIPRnet computer he used in the 2/10th Bde SCIF and by using W-get to bypass the configured and authorized method of access and extraction of the seventy-five classified United States DOS cables from the NCD database. PFC Manning has expertise in automation and Department of Defense Information Security. He was placed on notice that W-get was an unauthorized program by Mr. Milliman prior to introducing W-get on the DCIGS-A computer. PFC Manning was required to sign an Acceptable Use Policy (AUP) similar to the example in AR 25-2, Appendix B. PFC Manning knew that Wget was not a game, music, or a movie. COL Miller tolerated games, music, and movies on the DCIGS-A computer to enhance morale. PFC Manning never inquired whether W-get was an authorized program on the DCIGS-A computer. Neither COL Miller nor anyone else in PFC Manning's supervisory chain told PFC Manning that W-get was an authorized program on the DCIGS-A computer.

(2) PFC Manning had reason to believe such information so obtained, to wit: more than seventy-five classified United States DOS cables could be used to the injury of the United States or to the advantage of any foreign nation; and

(3) 18 U.S.C. §1030(a)(1) was in existence on the dates alleged in specification 13 of Charge II.

4. CHARGE III, Specifications 1-4: Violation of a Lawful General Regulation:

1. The Court has taken judicial notice of AR 25-2, 24 October 2007.

2. The Court applied the following definitions to these offenses:

General regulations are those regulations which are generally applicable to an armed force and which are properly published by a military department.

PFC Manning may be found guilty of violating a general regulation only if the fact-finder is satisfied beyond a reasonable doubt that the regulation was a general regulation.

When a general regulation prohibits certain acts, except under certain conditions, then the burden is on the prosecution to establish by legal and competent evidence beyond a reasonable doubt that PFC Manning does not come within the terms of the exceptions.

3. The Court finds beyond a reasonable doubt the following:

(1) That there was in existence a certain lawful general regulation in the following terms:

Specification 1: paragraph 4-5(a)(4), Army Regulation 25-2, dated 24 October 2007;.

Specification 2: paragraph 4-5(a)(3), Army Regulation 25-2, dated 24 October 2007;

Specification 3: paragraph 4-5(a)(3), Army Regulation 25-2, dated 24 October 2007;

Specification 4: paragraph 4-5(a)(3), Army Regulation 25-2, dated 24 October 2007;

(2) That PFC Manning had a duty to obey such regulation; and

(3) That at or near Contingency Operating Station Hammer, Iraq:

Specification 1: between on or about 1 November 2009 and on or about 8 March 2010, PFC Manning violated this lawful general regulation by attempting to bypass network or information security system mechanisms.

Specification 2: between on or about 11 February 2010 and on or about 3 April 2010, PFC Manning violated this lawful general regulation by adding unauthorized software, W-get, to a SIPRnet computer.

Specification 3: on or about 4 May 2010, PFC Manning violated this lawful general regulation by adding unauthorized software, W-get, to a SIPRnet computer.

Specification 4: between on or about 11 May 2010 and on or about 27 May 2010, PFC Manning violated this lawful general regulation by using an information system in a manner other than its intended purpose by extracting 74,000 email addresses from the USFI-GAL and by maintaining the email addresses on his private MAC computer.



DENISE R. LIND
COL, JA
Chief Judge, 1st Judicial Circuit